


CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal Bureau of Prisons Mid-Atlantic Regional Office 302 Sentinel Drive Annapolis Junct., MD 20701			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. Miguel Angel Marquez-Martinez (represented by Burcham & Zugman, 1010 Second Avenue, Suite 1800 San Diego, CA 92101, and Timothy A. Scott, 1350 Columbia St., Suite 600, San Diego, CA 92101)		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 05/25/1984	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT 05/18/2016 Wednesday	7. TIME (A.M. OR P.M.) 12:00 P.M.	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). See attached claim.					
9. PROPERTY DAMAGE <i>Mid-Atlantic Regional Office</i> NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). See attached claim.					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). See attached claim.					
10. PERSONAL INJURY/WRONGFUL DEATH STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. See attached claim.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
See attached claim.					
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY 8,000,000	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights). 8,000,000		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 		13b. PHONE NUMBER OF PERSON SIGNING FORM 619-794-0451		14. DATE OF SIGNATURE 05/05/2017	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).		CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, Imprisonment, or both. (See 18 U.S.C. 287, 1001.)			

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95-109

NSN 7540-00-634-4046

STANDARD FORM 95 (REV. 2/2007)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in Item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Tort Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

STANDARD FORM 95 REV. (2/2007) BACK

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May 8, 2017

Via: USPS Certified Mail

Federal Bureau of Prisons
Mid-Atlantic Regional Office
302 Sentinel Drive
Annapolis Junct., MD 20701

*Re: Miguel Angel Marquez-Martinez's Administrative Claim (Federal Tort Claims Act
and Bivens)*

To Whom It May Concern:

This firm and the firm of Burcham & Zugman represent Miguel Angel Marquez-Martinez ("Claimant") in the above-referenced matter. Pursuant to section 2675(a) of the Federal Tort Claims Act ("FTCA") (28 U.S.C. §§ 2671-2680), Claimant presents a written claim to the Federal Bureau of Prisons ("BOP"), the federal agency that injured Claimant through its wrongful acts and omissions.

This claim is timely made and if no response is received within six months of the date this claim is filed, Claimant shall treat the BOP's silence as a final denial of her claim and shall file a civil action with the appropriate court. *See* 28 U.S.C. §§ 2401(b) (a tort claim against the U.S. shall be made within two years after such claim accrues); 2675(a) ("The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section.")

Claimant complains against the United States of America, the BOP, BOP correctional officer "Dave," and Does 1 through 100, inclusive, and each of them, (collectively the "Individual Defendants," and, together with the Government, the "Defendants") and alleges as follows:

Claimant is sexually assaulted while undergoing competency treatment at FMC Butner

Claimant is a transgender inmate who identifies as a woman. She was in Bureau of Prisons custody in the Southern District of California after her arrest for illegal entry after deportation under 8 U.S.C. § 1326. On January 5, 2016, Claimant was ordered by the Hon. Marilyn L. Huff

to undergo competency treatment pursuant to 18 U.S.C. § 4241, in order to be restored to sanity for her criminal case. Claimant was transferred by the BOP to FMC Butner in North Carolina for that purpose.

At Butner, Claimant was repeatedly victimized and sexually assaulted based on her transgender appearance and identification. Officials at FMC Butner failed to properly classify, house, and protect Claimant from harm at the hands of other inmates and staff. As a result, Claimant was repeatedly raped and sexually assaulted by fellow male inmates and ultimately, by staff.

Claimant's nightmare culminated on May 18, 2016. She was still undergoing competency treatment at Butner at the time. Claimant was approached during the lunch call by a BOP correctional officer ("CO") known as "Dave." The CO instructed Claimant to accompany him to a separate room regularly used by inmates to play cards. This room was empty at the time because the other inmates were in the dining area.

Once inside the room, the CO held Claimant by the shoulders and pushed her to her knees. The CO then unzipped his pants and ordered Claimant to perform oral sex on him. In fear for her health and safety, Claimant complied with the CO's demands. After the CO ejaculated, some of his seminal fluid landed on a brassiere worn by Claimant. The CO then instructed Claimant to wash her face and mouth.

Claimant safeguarded the brassiere she was wearing at the time of this sexual assault. Claimant reported the incident to Butner's Warden and to the United States Attorney's Office ("USAO") for the Eastern District of North Carolina. The USAO and other agencies conducted an investigation, after which they determined that the DNA from the seminal fluid found on Claimant's brassiere matches that of CO "Dave." A criminal prosecution is currently underway against the CO.

The Individual Defendants are Liable to Claimant under *Bivens* for violating her Fifth and Eighth Amendment rights.

Defendants knew or should have known that Claimant, as a transgender inmate, is particularly and substantially at risk of suffering violence, sexual assault, and abuse while incarcerated in a federal correctional institution. Defendants also knew or should have known that Claimant had arrived at Butner to receive court-ordered psychological treatment, which left her in an even more vulnerable and precarious position. See Prison Rape Elimination Act of 2003, 42 U.S.C. § 15601 *et seq.* Claimant had a Fifth Amendment right to be treated equally to other inmates and to be protected from violence, sexual assaults, and abuse while in federal custody, and an Eighth Amendment right to be free from excessive force and cruel and unusual punishment—such as rape—while incarcerated.

Through the actions and omissions that resulted in Claimant's sexual assault, Defendants violated Claimant's Fifth and Eighth Amendment rights, and are liable to her under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Claimant suffered and continues to suffer pain, terror, fear, nightmares, anxiety, depression, stress, emotional

distress, loss of dignity, and humiliation as a result of the sexual assaults she suffered while in Defendants' custody, and is entitled to compensatory and punitive damages in the amount of \$8,000,000.

The Government is Liable to Claimant under the FTCA for Assault, Battery, Negligence, and Intentional / Negligent Infliction of Emotional Distress.

As noted above, Defendants knew or should have known that Claimant, as a transgender inmate, is particularly at risk of suffering violence, sexual assaults, and abuse while incarcerated in a federal correctional institution. Defendants also knew or should have known that Claimant had arrived at Butner to receive court-ordered psychological treatment, which left her in an even more vulnerable and precarious position. *See* Prison Rape Elimination Act of 2003, 42 U.S.C. § 15601 *et seq.* Defendants are liable for assault, battery, and infliction on emotion distress on Claimant as a result of the repeated sexual assaults. Further, Defendants were negligent by breaching their duty to protect Claimant from harm while she was in their custody. Because of Defendants' actions and omissions as outlined above, Claimant suffered and continues to suffer pain, terror, fear, nightmares, anxiety, depression, stress, emotional distress, loss of dignity, and humiliation, and is entitled to compensatory and punitive damages in the amount of \$8,000,000.

Conclusion

Based on the above-referenced injuries, Claimant requests the following relief from Defendants:

1. Monetary Damages: Compensatory and punitive damages in the amount of \$8,000,000.
2. Attorneys' fees and costs;
3. Interest at the maximum legal rate.

Please respond by written correspondence at the above-listed address within six months of the date this claim is filed. If no response is received within such time, Claimant shall treat the BOP's silence as a final denial of her claim and shall file a civil action with the appropriate court.

Sincerely,

s/ Timothy A. Scott

s/ David J. Zugman

TIMOTHY A. SCOTT
LAW OFFICES OF TIMOTHY A. SCOTT, APC
DAVID J. ZUGMAN
BURCHAM & ZUGMAN
Attorneys for Claimant Miguel Angel Marquez-Martinez

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BURCHAM & ZUGMAN

ATTORNEYS AT LAW

GARY PAUL BURCHAM
DAVID J. ZUGMAN

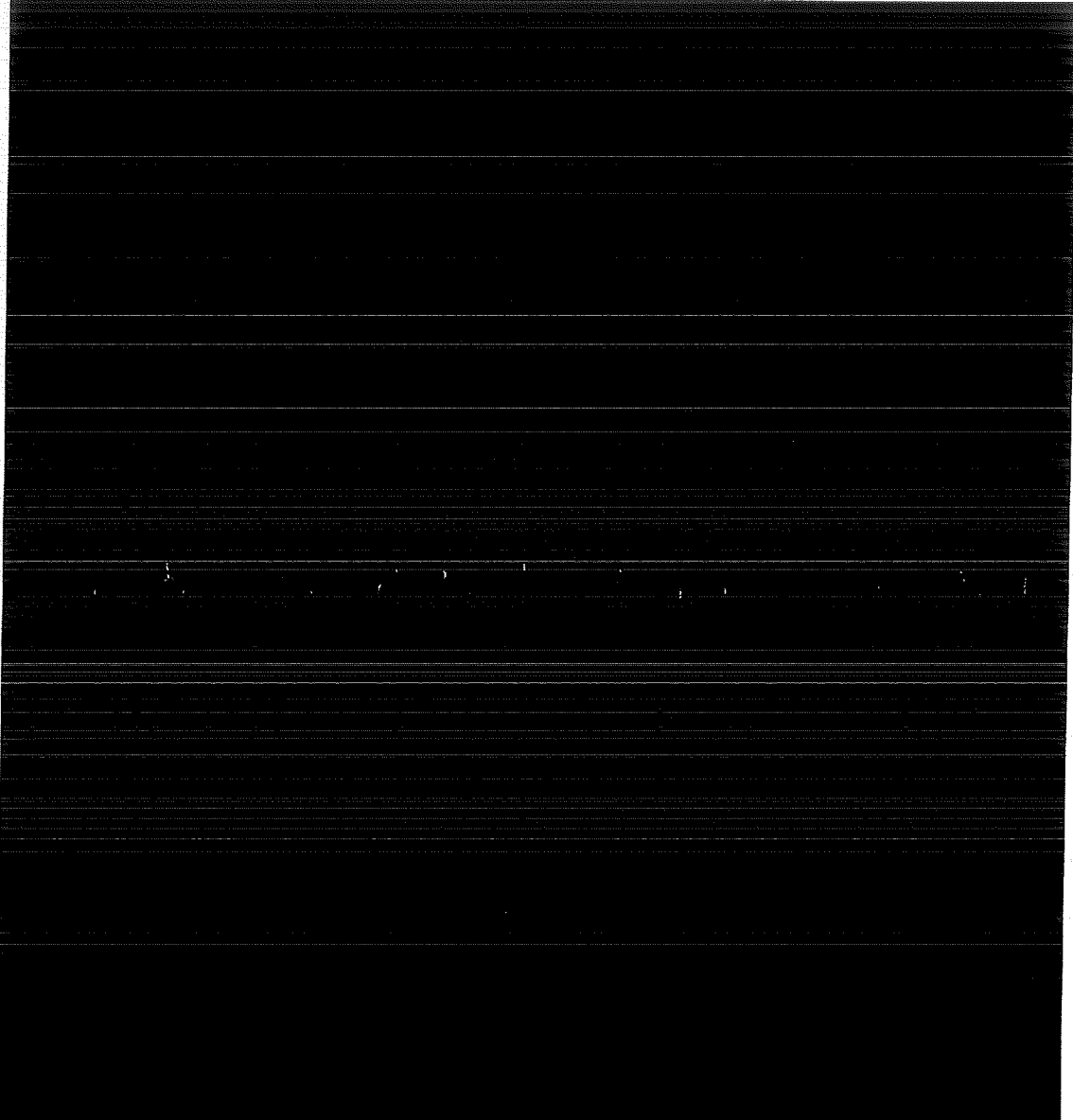
THE EXECUTIVE COMPLEX
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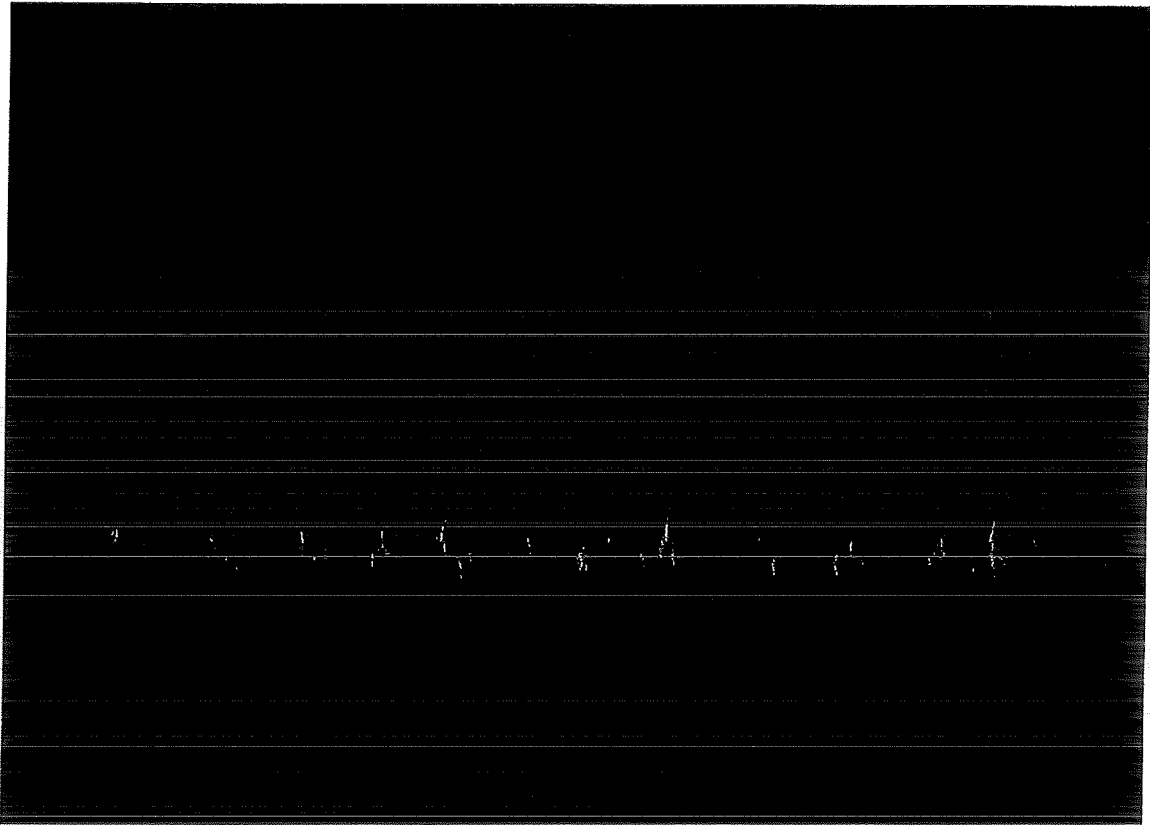
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TELEPHONE: (619) 699-5930
FACSIMILE: (619) 924-2201
EMAIL:GBURCHAM@SBCGLOBAL.NET

Retainer Agreement

(1) Miguel Angel Marquez-Martinez, ("Client"), hereby employs and retains, Gary P. Burcham and David J. Zugman of Burcham & Zugman, ("Attorneys"), to represent her in all matters arising out of injuries that she suffered while in custody at FCI Butner in 2016. This Retainer Agreement covers this matter only; any other matters must be the subject of a new and separate written agreement.

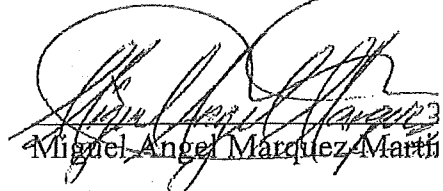




(9) Professional Liability Insurance Disclosure: Pursuant to California Professional Conduct 3-410, I am informing you in writing that we have professional liability insurance.

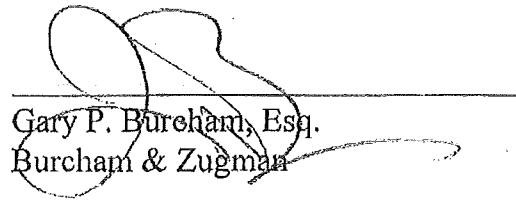
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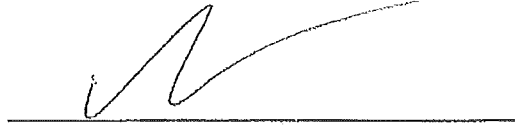

Miguel Angel Marquez Marti

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9/17/16


Gary P. Burcham, Esq.
Burcham & Zugman

Dated: 9-7-16


David J. Zugman, Esq.
Burcham & Zugman

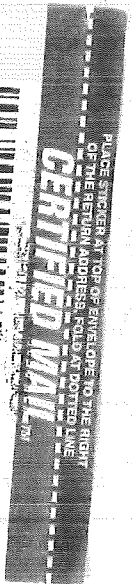
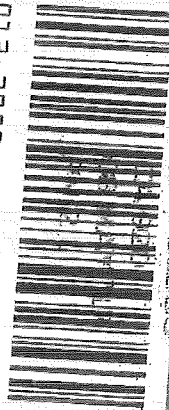
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